

IMPLEMENTATION AGREEMENT

For

PACIFIC GAS AND ELECTRIC COMPANY
SAN JOAQUIN VALLEY
OPERATION & MAINTENANCE
HABITAT CONSERVATION PLAN

By And Among

THE UNITED STATES FISH AND WILDLIFE SERVICE

THE CALIFORNIA DEPARTMENT OF FISH AND GAME

And

PACIFIC GAS AND ELECTRIC COMPANY

DRAFT APRIL 2006

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AGREEMENT

1.0 PARTIES

This agreement (“Agreement”) implements the Pacific Gas and Electric Company San Joaquin Valley Operation & Maintenance Habitat Conservation Plan (“PG&E O&M SJV HCP,” or “HCP”) as of the Effective Date, by and among: the United States Fish and Wildlife Service (“USFWS”) of the United States Department of the Interior; the California Department of Fish and Game (“CDFG”) of the State of California Resources Agency; and the Pacific Gas and Electric Company, LLC (“PG&E”).

These entities may be referred to collectively as the “Parties” and individually as a “Party.” USFWS and CDFG may be referred to collectively as the “Wildlife Agencies.”

2.0 RECITALS

2.1 Pacific Gas and Electric Company (“PG&E”) is the largest investor-owned electric and gas utility in the United States, serving more than 4.8 million electricity customers and 4 million natural gas customers and employing more than 20,000 people. PG&E’s service area encompasses approximately 70,000 square miles in 48 of California’s 58 counties. Nearly 30% of the total service area lies within nine counties in the San Joaquin Valley.

2.2 The existing transmission and distribution infrastructure requires long-term operation and maintenance and minor construction activities (collectively, “O&M”) to deliver reliable energy to its customers. PG&E possesses legal rights-of-way to access its transmission and distribution infrastructure. Many of these O&M activities are mandated and/or regulated by other state and federal laws that govern utilities and public health and safety. Over the years, certain at-risk species in the service area have become listed as threatened or endangered, and others have attained other special status designations due to concern over their abundance. These listings and designations have prompted more frequent consultations with the Wildlife Agencies to ensure that PG&E’s O&M activities do not jeopardize the listed species.

2.3 The purpose of the PG&E SJV O&M HCP is to enable PG&E to continue to conduct its current and future O&M activities and minor new construction in the San Joaquin Valley, and to enable PG&E or a nonprofit conservation organization to manage habitat on mitigation lands and conduct biological surveys to capture data for purposes of reporting on the implementation of the HCP (“Covered Activities”), while avoiding, minimizing, and compensating for possible direct, indirect, and cumulative adverse effects on threatened and endangered species that could result from such management activities. The Covered Activities are described in detail in Chapter 2 of the HCP.

2.4 PG&E’s priority is to avoid and minimize effects to Covered Species and their habitats to the fullest extent practicable. However, because PG&E’s O&M activities

are necessary to ensure the safe and reliable transmission and distribution of electrical power and natural gas to millions of Californians, and because PG&E's O&M are closely regulated by the California Public Utilities Commission, PG&E often does not have the discretion to completely avoid impacts to Covered Species and their habitats.

2.5 PG&E also desires to integrate other conservation strategies that it already implements, or is in the process of designing and implementing, into one comprehensive conservation plan for the San Joaquin Valley. To that end, the HCP integrates PG&E's programmatic federal consultation under Section 7 of the Endangered Species Act for valley elderberry longhorn beetle ("VELB Conservation Program," at Appendix D of the HCP), a statewide Migratory Bird Protection Program, based on a 2002 agreement with USFWS ("Migratory Bird Protection Program," at Appendix E of the HCP), and a Master Streambed Alteration Agreement (at Appendix F of the HCP) with CDFG. The integration of these programs is intended to enhance protection and conservation benefits for species while streamlining the implementation of these various environmental protection strategies within the company. It will also enable unified reporting to the Wildlife Agencies.

2.6 As more specifically described in Chapter 1 and Figure 1-1 of the HCP, the "Plan Area" comprises PG&E's gas and electrical transmission and distribution facilities, the lands owned by PG&E and/or subject to PG&E easements for these facilities, private access routes to infrastructure associated with O&M activities, minor facility expansion areas (all collectively "PG&E right-of-way" or "ROW"), and mitigation areas for impacts resulting from Covered Activities, in portions of nine counties in the San Joaquin Valley, including: San Joaquin, Stanislaus, Merced, Fresno, Kings, Kern, Mariposa, Madera, and Tulare. On the east side of the San Joaquin Valley, the boundary in the northern portion of the Plan Area follows the San Joaquin and Stanislaus County lines. The remainder of the eastern boundary follows the perimeter of federal lands or the 3,000-foot elevation contour, whichever is lower, along the western Sierra Nevada foothills. On the west side of the San Joaquin Valley, the boundary follows the western boundary of San Joaquin, Stanislaus, Merced, Fresno, Kings, and Kern Counties. The northern boundary of the Plan Area is the northern San Joaquin County line, and the southern limit of the Plan Area boundary is the 3,000-foot elevation contour north of the Kern County line.

2.7 The O&M activities and minor new construction within the Plan Area shall be implemented according to the HCP. The Plan Area contains land-cover types that serve as suitable habitat for various San Joaquin Valley species classified as either endangered, threatened, fully protected, rare or of special concern by the Wildlife Agencies. Most of the O&M activities carried out by PG&E result in only temporary disturbance or impacts to these species or their habitat, if at all, with only a fraction of PG&E's activities resulting in permanent impacts.

2.8 The HCP describes the measures that PG&E will implement over the next thirty (30) years to avoid "Covered Species," and to minimize and mitigate the impact of

“Authorized Take” of Covered Species, while carrying out the Covered Activities in the Plan Area. The Covered Species are listed in Exhibit A.

2.9 USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) (“FESA”), the Migratory Bird Treaty Act (16 U.S.C. § 701 et seq.) (“MBTA”), the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.) (“BGEPA”), the Fish and Wildlife Coordination Act (16 U.S.C. § 661-666(c)) (“FWCA”), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) et seq.).

2.10 CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various state laws, including the California Endangered Species Act (Fish & G. Code § 2050 et seq.) (“CESA”), the Native Plant Protection Act (Fish & G. Code § 1900 et seq.) (“NPPA”), and California Fish and Game Code sections 1600 et seq., 1801, 1802, 3511, 4700, 5050 and 5515.

2.11 FESA prohibits the “Take” of species listed as endangered or threatened under FESA. Under Section 10(a)(1)(B) of FESA (16 USC § 1539(a)), the Service may issue permits (“Federal Permits”) authorizing the incidental “Take” of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such Take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan (“HCP”) describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such Take. PG&E submitted its HCP to USFWS, and applied for a federal permit for incidental Take within the Plan Area of Covered Species. The “Federal Permit” issued by USFWS based on the HCP will be issued concurrently with the execution of this Agreement.

2.12 CESA prohibits the “Take” of species listed as endangered, threatened or candidate species under CESA. Section 2081 of the California Fish & Game Code allows CDFG to authorize by permit (“State Permit”) the Take of any endangered, threatened or candidate species during otherwise lawful activities, where the impacts of the Authorized Take are minimized and fully mitigated in a plan approved by CDFG. PG&E submitted its HCP to CDFG, and applied for a state permit for Take within the Plan Area of Covered Species. The “State Permit” issued by CDFG based on the HCP will be issued concurrently with the execution of this Agreement.

2.13 The HCP was developed through an iterative process of: intensive study of the Covered Species, the Covered Activities, and the Plan Area, discussions between PG&E and the Wildlife Agencies; and environmental review under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”) and the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) (“CEQA”).

2.14 The purposes of this Agreement are: a) to ensure implementation of each of the terms and conditions of the HCP and the Federal and State Permits (collectively referred to as the “Federal and State Permits”); b) to provide assurances to PG&E that as long as the terms of the HCP are properly implemented, no additional mitigation will be required of PG&E except as provided for in this Agreement or required by law; and c) to describe remedies and recourse should any party fail to perform its obligations as set forth in the HCP and this Agreement.

2.15 Although some of PG&E’s O&M activities within its ROW may result in direct harm to Covered Species, a greater likelihood is that PG&E’s O&M activities will impact Covered Species due to temporary impairment of the habitat upon which the Covered Species depend. The HCP provides a conservation strategy that is intended to avoid, minimize, and compensate for all direct and indirect harm that rises to the legal definition of Take.

2.16 The Agreement defines the Parties’ roles and responsibilities and provides a common understanding of action that will be undertaken to minimize and mitigate the effects on the Covered Species caused by the Covered Activities within the Plan Area and to avoid jeopardy to the listed Covered Species.

2.17 Adequate consideration supports this Agreement. PG&E is agreeing to substantial commitments of land, natural resources, financial resources, human resources and other assets to conserve and manage the Covered Species and their habitats, in exchange for the assurances provided by the Wildlife Agencies in this Agreement.

3.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

“Adaptive Management” means to use the results of new information gathered through the monitoring program of the HCP to adjust management strategies and practices to achieve the goals and objectives stated in the HCP and to assist in providing for the conservation of covered species, as provided in Chapter 6 of the HCP.

“Agreement” means this document, which incorporates the HCP and Federal and State Permits by reference.

“AMM” means the avoidance and minimization measures listed in Table 4-1 of the HCP.

“Authorized Take” or **“Take Authorization”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to PG&E pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to PG&E pursuant to Section 2081 of the California Endangered Species Act.

"BGEPA" means the federal Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), including all regulations promulgated pursuant to that Act.

"CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency charged with administering the California Endangered Species Act and other provisions of the California Fish and Game Code.

"CEQA" means the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), including all regulations promulgated pursuant to that Act.

"CESA" means the California Endangered Species Act (Fish & G. Code t§ 2050 et seq.), including all regulations promulgated pursuant to that Act.

"Changed Circumstances" means, pursuant to 50 CFR 17.3, changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by PG&E, USFWS, and CDFG and that can be planned for. Changed Circumstances and planned responses to Changed Circumstances are identified in Section 11.3 of this Agreement and Chapter 6 of the HCP.

"Conserve," "Conserving," or "Conservation" means to use, and the use of, methods and procedures within the HCP Plan Area that are designed to bring the listed Covered Species to the point at which the measures provided by FESA and CESA are not necessary, or to maintain or enhance the condition of the unlisted Covered Species so that listing pursuant to FESA and CESA will not become necessary.

"Conservation Strategy" means the conservation and management measures provided in the HCP to minimize and mitigate the impacts of Authorized Take of the Covered Species, as described at Chapters 4 and 6 of the HCP, including those measures described at Chapter 6 of the HCP to respond to Changed Circumstances.

"Covered Activities" means those land uses, including O&M and conservation activities identified in detail in Chapter 2 of the HCP, to be carried out by PG&E and its agents in the Plan Area that may result in Authorized Take of Covered Species during the term of the HCP.

"Covered Species" means the species, listed and unlisted, that PG&E intends to conserve and protect through the HCP. Covered Species are listed in Exhibit A.

"CPUC" means the California Public Utilities Commission, established pursuant to the California Public Utilities Act, to regulate privately owned telecommunications, electric, natural gas, water, railroad, rail transit, and passenger transportation companies to ensure that Californians have safe and reliable utility service.

“Dispute Resolution Panel” means the group of persons appointed pursuant to Section 12.7 of this Agreement to resolve disputed technical or scientific issues referred to it by the Parties during the implementation of the HCP.

“Effective Date” means the date following execution of this Agreement by all Parties, on which the last of the required Federal and State Permits is issued.

“Federally Listed Species” means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP, as of the date of such listing.

“Federal Permit” means the federal incidental Take permit issued by USFWS to PG&E pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act.

“FESA” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.), including all regulations promulgated pursuant to that Act.

“Fully Protected Species” means any Covered Species designated as fully protected in California Fish and Game Code Sections 3511, 4700, 5050 and 5515.

“HCP” means the Habitat Conservation Plan prepared by PG&E to address the requirements of Section 10(a)(1)(B) of FESA and Section 2081 of CESA, and incorporated by reference in this document.

“MBTA” means the federal Migratory Bird Treaty Act (16 U.S.C. § 701 et seq.), including all regulations promulgated pursuant to that Act.

“Master Streambed Alteration Agreement” means the agreement that PG&E and CDFG expect to enter into pursuant to Section 1602 and Section 1605(g) of the Fish and Game Code to ensure that the Covered Activities comply with those provisions. PG&E and CDFG may enter the MSAA either concurrent with or after the issuance of the State Permit.

“NEPA” means the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

“NOAA Fisheries” or **“NMFS”** means the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service, a subdivision of the United States Department of Commerce.

“PG&E” means the Pacific Gas and Electric Company.

“PG&E EIS/EIR” means the Joint Environmental Impact Statement and Environmental Impact Report prepared to analyze the environmental impacts that may result from Covered Activities with implementation and Federal approval of the HCP and Federal

and State Permits, and the Master Streambed Alteration Agreement, under NEPA and CEQA.

“PG&E right-of-way” or “ROW” means those lands within the Plan Area in which PG&E holds a fee or partial interest or right-of-way for operating and maintaining its electrical and gas transmission system, on or after the Effective Date.

“Party” or “Parties” means any or all of the signatories to this Agreement.

“Plan Area” means the land within the boundaries detailed in Section 2.6 of this Agreement.

“Pre-activity survey” means the survey that PG&E will conduct prior to each qualifying Covered Activity, as provided in Section 7.3 of this Agreement and Chapter 4 of the HCP.

“Service” means the USFWS.

“State Listed Species” means the Covered Species which are listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, and the Covered Species which are listed as threatened or endangered, or a candidate for such status pursuant to CESA during the term of the HCP, as of the date of such listing.

“State Permit” means the state Take permit issued to PG&E pursuant to Section 2081 of CESA.

“Take” and “Taking” have the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and have the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and other applicable provisions of the California Fish and Game Code.

“Unforeseen Circumstances” means changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the plan’s developers at the time of the plan’s negotiation and development, and that results in a substantial and adverse change in the status of a Covered Species.

“USFWS” means the United States Fish and Wildlife Service, a subdivision of the United States Department of Interior.

“VELB” means the valley elderberry longhorn beetle.

“VELB Conservation Program” means PG&E’s programmatic federal consultation with USFWS, and USFWS’s biological opinion issued pursuant to Section 7 of the FESA for valley elderberry longhorn beetle.

“**Wetlands**” means generally those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions.

“**Wildlife Agencies**” means the USFWS and CDFG.

4.0 RELATIONSHIP BETWEEN THE HABITAT CONSERVATION PLAN AND THE IMPLEMENTATION AGREEMENT

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the HCP, recognizing that the HCP describes the components of a habitat conservation plan and was not drafted as a contract. In the event of any direct contradiction, conflict or inconsistency between the HCP and this Agreement, the terms of this Agreement shall control. In all other cases, the provisions of the HCP and this Agreement shall be interpreted to be consistent with and complementary to each other.

5.0 LEGAL OBLIGATIONS OF THE AGENCIES

5.1 USFWS

5.1.1 USFWS Findings

As further described in the Section 10(a)(1)(B) permit issued by the USFWS, the USFWS has found that the HCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of FESA for each Covered Species that is a Federally Listed Species within the jurisdiction of the USFWS.

For each Covered Species that is not a Federally Listed Species as of the Effective Date, USFWS has found that the HCP satisfies the permit issuance criteria under section 10(a)(2)(B) of the FESA that would otherwise apply if such Covered Species were a Federal Listed Species.

The Take of Federally Listed Species that are plants is not prohibited under FESA, and therefore, Take Authorization for federally listed plants is not necessary. Plant species included on the list of Covered Species are listed on the Federal Permits in recognition of the conservation measures and benefits provided for those plants under the HCP. As of the Effective Date, any reference in this Agreement or in the HCP to the Authorized Take of Covered Species shall, for the purpose of incidental Take authorized under Section 10(a)(1)(B), refer solely to Federally Listed Species other than plants on the Covered Species list. If at any time during the term of this Agreement and the Federal Permits, any plant listed on the Covered Species becomes subject to the Take prohibition under FESA, the Federal Permit shall automatically become effective as to such species as

provided in Section 11.4 of this Agreement and PG&E shall receive incidental Take Authorization for that plant.

5.1.2 USFWS Obligations

Concurrent with the execution of this Agreement by all Parties, and after satisfaction of all other requirements, USFWS issued to PG&E the Federal Permit under Section 10(a)(1)(B) of the FESA, authorizing the incidental Take by PG&E of each Covered Species listed on the Federal Permit resulting from Covered Activities in the Plan Area. The Federal Permit is conditioned on compliance with the terms and conditions of the Federal Permit, the HCP, and this Agreement. USFWS shall monitor PG&E's implementation of the HCP and compliance with the Federal Permit. USFWS shall also provide technical assistance and timely collaboration and consultation to PG&E regarding implementation of the HCP, as provided in the HCP and this Agreement, throughout the duration of the Federal Permit.

5.2 CDFG

5.2.1 CDFG Findings

As further described in the State Permit and the findings issued by CDFG under CESA, CDFG, based on the best scientific and other information that is reasonably available, and the terms and provisions of this Agreement and the HCP, has found that with respect to the Covered Species:

- (a) Incidental Take. The authorized take of Covered Species will be incidental to an otherwise lawful activity.
- (b) Minimize and Fully Mitigate. The impacts of the authorized take will be minimized and fully mitigated.
- (c) Roughly Proportional. The measures required to minimize and fully mitigate the impacts of the authorized take will be roughly proportional in extent to the impact of the authorized take of Covered Species.
- (d) Applicant's Objectives. The measures required to minimize and fully mitigate the impacts of the authorized take will preserve PG&E's objectives to the greatest extent possible, consistent with the obligation to minimize and fully mitigate the impacts of the authorized take.
- (e) Capable of Successful Implementation. All required measures will be capable of successful implementation.
- (f) Adequate Funding. PG&E has ensured adequate funding to implement the required minimization and mitigate measures, and for monitoring compliance with, and effectiveness of any Covered Species.
- (g) No Jeopardy. The issuance of the State Permit will not jeopardize the continued existence of any Covered Species.
- (h) Unlisted Species. Covered Species that are not currently listed as threatened or endangered under CESA have been treated in the HCP as if

they were listed, and the HCP identifies measures to minimize and fully mitigate the impacts of the authorized take of such unlisted species. The findings referenced in this Section 5.2.1 apply to all Covered Species, including Covered Species that are not listed.

5.2.2 CDFG Obligation

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other requirements, CDFG shall and has issued to PG&E the State Permit under Section 2081 of CESA, authorizing the Take by PG&E of listed Covered Species listed on the State Permit where the Take results from Covered Activities in the Plan Area. The State Permit is conditioned on compliance with the terms and conditions of the State Permit, the HCP, and this Agreement. As required by the State Permit and as otherwise necessary, CDFG shall monitor PG&E's implementation of the HCP and compliance with the State Permit based on the results of monitoring and other information provided to CDFG by PG&E. Throughout the duration of the State Permit, CDFG shall also provide technical assistance and timely collaboration and consultation to PG&E regarding implementation of the HCP, as provided in the HCP and this Agreement. The Parties recognize the importance of the California Natural Diversity Data Base as a tool to implement the conservation strategy in the HCP, and CDFG agrees to maintain the data base to the extent feasible and subject to legislative appropriation.

5.3 Environmental Review

5.3.1 Federal Law – National Environmental Policy Act

Approval of the HCP and issuance of the Federal Permit under Section 10(a)(1)(B) of FESA to PG&E by USFWS are actions subject to review under the National Environmental Policy Act ("NEPA"). USFWS is the federal lead agency under NEPA. Prior to the Effective Date, the Service evaluated the HCP pursuant to NEPA in the Pacific Gas and Electric Company San Joaquin Valley Operations & Maintenance Habitat Conservation Plan Final EIS/EIR ([citation], 2005) ("PG&E EIS/EIR").

5.3.2 State Law – California Environmental Quality Act

Issuance of the State Permit under Section 2081 of CESA to PG&E by CDFG is a discretionary approval of a project subject to review under the California Environmental Quality Act ("CEQA"). CDFG is the State lead agency for the State Permit and the Master Streambed Alteration Agreement under CEQA. Prior to issuance of the State Permit and the Effective Date of this Agreement, CDFG evaluated in the PG&E EIS/EIR the environmental impacts that may result from Covered Activities authorized by the State Permit and Master Streambed Alteration Agreement and issued findings under CEQA addressing the potential for significant adverse effects to the environment. In so doing, CDFG complied with CEQA, including its lead agency obligations prescribed by Title 14 of the California Code of Regulations, commencing with section 783.0 et seq.

6.0 RIGHTS AND OBLIGATIONS OF PACIFIC GAS AND ELECTRIC COMPANY

6.1 Implementation of the Conservation Strategy

PG&E will fully and faithfully perform all obligations assigned to it under this Agreement, the HCP, and the Federal and State Permits, including but not limited to the terms of this Section 6.0, Section 7.0 (Implementation of the HCP), 8.0 (Monitoring and Adaptive Management) and 9.0 (Funding).

PG&E will implement all of the conservation, management and monitoring measures, or such measures as they may be modified through adaptive management, as described in this Agreement and the HCP, whether or not such conservation, management and monitoring measures are specifically referenced in this Agreement. For the purposes of this Agreement, all of these measures are collectively referred to as the “Conservation Strategy.”

As of the Effective Date, PG&E may Take the Covered Species while carrying out Covered Activities in the Plan Area, as authorized by and subject to the conditions of the Federal and State Permits, this Agreement and the HCP. The Covered Activities include all activities described in Chapter 2 of the HCP.

The authority issued to PG&E hereunder applies to all of PG&E’s officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents who engage in any Covered Activity. PG&E shall conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Federal and State Permits, and PG&E shall be responsible for supervising their compliance with those terms and conditions. All contracts between PG&E and such persons and entities shall require their compliance with the Federal and State Permits, this Agreement and the HCP.

7.0 IMPLEMENTATION OF THE HCP

7.1 Overview of the Conservation Strategy

In accordance with the Conservation Strategy of the HCP, PG&E shall: avoid impacts to Covered Species and their habitat to the maximum extent practicable; minimize unavoidable impacts and compensate for Authorized Take of Covered Species and their habitat by establishing and managing compensation habitat in perpetuity.

7.2 Conservation Strategy Limited to PG&E Right-of-Access

Nothing in this Agreement or the HCP shall be construed to require PG&E to conduct any action on land to which PG&E does not possess legal access, nor shall PG&E be required to obtain permission from any third party for access to any such land.

7.3 Pre-Activity Surveys

7.3.1 When Pre-Activity Surveys Are Required

PG&E shall conduct pre-activity surveys for Covered Activities as described under the heading “Estimation of Levels of Disturbance” in Chapter 4 of the HCP and as reflected in Table 4-6 of the HCP.

7.3.2 How Pre-Activity Surveys Are Conducted

Pre-activity surveys will be conducted according to Chapter 4 of the HCP, or according to any more specific requirements that may be described in the VELB Conservation Program (Appendix D of the HCP), the Migratory Bird Protection Program (Appendix E of the HCP), and the Master Streambed Alteration Agreement (Appendix F of the HCP).

PG&E will engage qualified biologists to carry out the pre-activity surveys in accordance with specific biological standards to ensure consistency in methodology and results, as further specified in: Table 4-9 of the HCP; and the VELB Conservation Program (Appendix D of the HCP). For plants, PG&E will engage qualified botanists to carry out the pre-activity surveys in accordance with a standard methodology, as further specified for individual species in Table 4-10 of the HCP.

Each pre-activity survey will be sufficient to: document the percentage of the Covered Activity site suitable for Covered Species; identify which avoidance and minimization measures shall be implemented for each Covered Activity; and quantify expected Take of Covered Species and temporary and permanent loss of habitat.

7.3.3 Timing of Pre-Activity Surveys

Pre-activity surveys to assess potential effects on suitable habitat will be conducted prior to the Covered Activity or as further specified in the VELB Conservation Program (Appendix D of the HCP). Pre-activity surveys for those Covered Species that are plants species will be conducted at an appropriate time of year for reliable identification, according to Table 4-10 of the HCP, to the extent practicable. Pre-activity surveys may be performed at different intervals preceding the Covered Activity if the Covered Activity is to be carried out without ample warning due to an emergency or unscheduled outage. In the case of plants, if the plant surveys cannot be conducted during the appropriate time of year, PG&E will assume that the effect on covered plant species is proportionate to the percentage of occupied habitat identified in those surveys that are

conducted during the appropriate seasonal window. If no other surveys have been conducted for the plan in the appropriate seasonal window, the entire potentially suitable area will be considered occupied and affected.

7.4 Avoidance and Minimization Measures

Table 4-2 of the HCP lists avoidance and minimization measures (“AMM”) that PG&E will implement as appropriate before and during Covered Activities. PG&E shall avoid and minimize Take of Covered Species where practicable, except that PG&E shall avoid Take of all Fully Protected Species, and shall avoid Take of MBTA listed species unless (a) they are listed under the ESA or (b) the Take is otherwise authorized in a special use permit issued by the USFWS. Practicable is defined as physically possible and not conflicting with other regulatory obligations or safety considerations.

AMM numbers one through ten in Table 4-2 of the HCP will be implemented for all Covered Activities. AMM numbers eleven through twenty-four will be implemented if indicated in the corresponding pre-activity survey.

7.5 Best Management Practices

Tables 4-6, 4-7 and 4-8 list best management practices that PG&E shall incorporate in all of its vegetation management activities for electric facilities.

7.6 Compensation

In order to fully mitigate the impacts of Authorized Take, PG&E shall implement a compensation program by funding and carrying out the acquisition, enhancement, and maintenance of habitat for the benefit of Covered Species, in accordance with the Federal and State Permits, this Agreement and the HCP.

7.6.1 Requirements for Compensation

The amount of compensation required shall be determined by calculating the disturbed habitat of Covered Activities that were preceded by a pre-activity survey, and by estimating the disturbed habitat of Covered Activities that were not preceded by a pre-activity survey, according to the approach detailed in Chapter 4 of the HCP.

Permanent suitable habitat losses will be compensated at a 3:1 ratio, and temporary suitable habitat losses will be compensated at a 0.5:1 ratio for all Covered Species except valley elderberry longhorn beetle (“VELB”). Specific compensation for VELB is provided in the VELB Conservation Program (Appendix D of the HCP).

PG&E may satisfy its compensation obligation by placing conservation easements on existing lands owned by PG&E, by purchasing high-quality natural lands that may support target species, by obtaining credits from existing mitigation banks, and by

acquiring conservation easements from willing sellers. With advance approval of the Wildlife Agencies, PG&E may also in certain circumstances be allowed to provide compensation for the impacts of authorized Take of by making a financial contribution to a conservation organization or by enhancing habitat, as approved by the Wildlife Agencies, where such contribution or enhancement mitigates impacts of Take of rare plants that are Covered Species that result from Covered Activities under the Federal and State Permits.

Compensation lands shall be considered “acquired” when they are legally encumbered by a conservation easement that: is dedicated in perpetuity in favor of the Wildlife Agencies or a Wildlife Agency approved third-party conservation organization; and includes a conservation plan providing for the long-term management and funding of the conservation values.

7.6.2 Compensation To Remain Ahead of the Impacts of Authorized Take

PG&E shall ensure that its acquisition of compensation lands and/or credits shall remain ahead of the amount of compensation required as a result of actual Take, subject to the exception in Section 7.6.3 of this Agreement. To stay ahead of compensation required, PG&E shall acquire approximately 217 acres of compensation lands by the Effective Date, following the guidance of the regional and habitat-type objectives listed in Tables 4-12 and 4-13 of the HCP and the VELB Conservation Program (Appendix D of the HCP).

7.6.3 Compensation for Rare Plants

Compensation for Take of rare plants shall be accomplished no later than two years after the time of the disturbance, in order to identify and acquire lands suitable for the particular plant species, as represented in Table 4-14 of the HCP.

8.0 MONITORING, REPORTING, AND ADAPTIVE MANAGEMENT

8.1 General Approach to Monitoring, Reporting and Adaptive Management

PG&E shall implement each of the monitoring, reporting and adaptive management programs described in Chapter 6 of the HCP, the VELB Conservation Program (Appendix D of the HCP), the Migratory Bird Protection Program (Appendix E of the HCP), and the Master Streambed Alteration Agreement (Appendix F of the HCP), whether or not they are specifically referenced in this Agreement. PG&E’s obligation to fund the implementation of the HCP as further specified in Section 9.0 of this Agreement includes the obligation to fund all monitoring programs described in the HCP and these Appendices.

8.2 Annual Reporting

PG&E will prepare an annual HCP Monitoring Report that will consolidate all of the reporting requirements of the HCP, including the VELB Conservation Program (Appendix D of the HCP), the Migratory Bird Protection Program (Appendix E of the HCP), and the Master Streambed Alteration Agreement (Appendix F of the HCP) in accordance with Chapter 6 of the HCP.

No later than January 31st of each year, PG&E shall provide a single HCP Monitoring Report to the Wildlife Agencies containing all of the reports and other information that are due to the Wildlife Agencies for the prior calendar year. PG&E and the Wildlife Agencies shall cooperate to identify a format for the HCP Monitoring Report, including all information and data contained therein, that is most economical to compile and accessible to use.

8.3 Additional Information

The Wildlife Agencies may request from PG&E information necessary to determine whether PG&E is complying with the Federal and State Permits, the HCP, and this Agreement. The Parties acknowledge the HCP and the Federal and State Permits include compliance and effectiveness monitoring, other reporting obligations, and an adaptive management program that, when taken together, the Parties believe will provide sufficient information for the Wildlife Agencies to monitor, assess, and ensure the effectiveness of and PG&E's compliance with the Federal and State Permits, the HCP, and this Agreement. The Parties also acknowledge that, in unusual circumstances, information in addition to that required by the monitoring and reporting program, and the adaptive management program in the HCP may be necessary for the Wildlife Agencies to evaluate PG&E's compliance with the Federal and State Permits, the HCP, and this Agreement. Where a Wildlife Agency determines such additional information is necessary, any request to PG&E for such information shall have a reasonable basis and be designed by the Wildlife Agencies to generate, obtain, and provide the information in a manner least intrusive to PG&E operations while permitting the Wildlife Agencies to carry out their respective oversight responsibilities.

Subject to 50 C.F.R. §§ 13.27 through 13.29, 17.22, and 17.32, and section 783.7 of Title 14 of the California Code of Regulations, PG&E shall be required only to provide reasonably available information in its current state. Nothing in this Agreement shall compel PG&E to disclose communications that are subject to the work product or attorney-client privilege, or any other privilege applicable at the time the information request is made. PG&E may designate, by notifying the Wildlife Agencies in writing, any trade secrets or commercial, proprietary, or financial information, or data bearing upon national security ("Confidential Information"), that is requested by the Wildlife Agencies as exempt from disclosure by the Wildlife Agencies pursuant to a request made

under the federal Freedom of Information Act (“FOIA”) and/or the California Public Records Act (“PRA”), because such trade secret and/or information so designated (1) is Confidential Information, (2) has not been disclosed to the public by PG&E, and (3) to PG&E’s knowledge is not routinely available to the public from other sources. Should Confidential Information be requested pursuant to FOIA and the PRA, the Wildlife Agencies will contact PG&E sufficiently prior to releasing any such information so as to allow PG&E a reasonable opportunity to protect the Confidential Information from release. This provision is not intended to limit the applicability of FOIA or the PRA.

9.0 FUNDING

9.1 Primary Funding and Demonstration of Availability

PG&E warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP and this Agreement. To fulfill this contractual obligation, PG&E will partially rely upon income derived from the transmission and distribution of electricity and gas through the facilities maintained by PG&E’s Covered Activities in the Plan Area. By December 1st of each year after the Federal and State Permits are in effect, PG&E shall submit to the Wildlife Agencies a written declaration by PG&E’s Habitat and Species Protection Program Manager confirming that all costs for full implementation of the HCP for the following calendar year have been budgeted and authorized for expenditure for that purpose.

9.2 Material Change in Resources

PG&E will promptly notify the Wildlife Agencies of any material change in PG&E’s funding resources. A material change in PG&E’s funding resources is any change in the financial condition of PG&E, or the availability of its funds, that will impair PG&E’s ability to carry out its obligations under this Agreement, the HCP, and the Federal and State permits.

10.0 MODIFICATION AND AMENDMENT

10.1 Modification and Amendment of the State Permit

Any modification or amendment of the State Permit shall be subject to controlling State law, including CDFG regulations implementing Fish and Game Code sections 2080 and 2081. (See Cal. Code Regs., tit. 14, §783.0 et seq.)

10.2 Exceptions to the Conservation Strategy

Nothing in the Adaptive Management or Changed Circumstances provisions of this Agreement or the HCP, nor any other provision that provides for an exception for the application of any measure included in the Conservation Strategy, authorizes an increase in the amount of Take, or an increase of the impacts of Take, of Covered Species beyond

that authorized by the Federal and State Permits. Any modification that would result in such an increase in Take beyond that authorized by the Federal and State permits must be approved as a permit amendment under Section 10.3. of this Agreement.

10.3 Amendment of this Agreement

This Agreement may be amended only with the written consent of each of the Parties. PG&E may object to any amendment proposed by the Wildlife Agencies upon any reasonable basis.

10.4 Amendment of the HCP

The HCP may be amended only with the written consent of each of the Parties. PG&E may object to any amendment proposed by the Wildlife Agencies upon any reasonable basis. Nothing in this subsection shall be construed as a limitation on or waiver of CDFG's authority to amend the State Permit as required by law regardless of whether PG&E concurs with such amendment. (Cal. Code Regs., tit. 14, §783.6, subd. (c)(2).)

10.4.1 Minor Amendments

10.4.1.1 Scope of Minor Amendments

Minor Amendments to the State Permit, this Agreement and the HCP pursuant to this subsection may include but are not limited to the following:

- (a) Corrections of typographical, grammatical, and similar editing errors in the HCP and this Agreement that do not change the intended meaning;
- (b) Correction of any maps or exhibits to correct errors in mapping;
- (c) Minor changes to survey, monitoring or reporting protocols;
- (d) Changing any measure(s) in the Conservation Strategy to respond to a Changed Circumstance identified in Section 11.3 of this Agreement;
- (e) Correction of any tables or appendices in the HCP to reflect previously approved amendments to the HCP or the Federal and State Permits; and
- (f) Amendments to the State Permit that would not significantly modify the scope or nature of the Covered Activities or the minimization, mitigation or monitoring measures in the State Permit, as determined by CDFG.

10.4.1.2 Processing Minor Amendments

10.4.1.2.1 CDFG Processing Minor Amendments to the State Permit

CDFG shall respond to and process proposed Minor Amendments to the State Permit in accordance with State law, including section 783.6, subdivision (c), of Title 14 of the California Code of Regulations.

10.4.1.2.2 Notice and Response

Any Party may propose a Minor Amendment to the Federal and State Permits, this Agreement and the HCP by providing written notice to all other Parties. Such notice shall include a statement of the reason for the proposed amendment and an analysis of its environmental effects, if any, including any effects on Covered Activities and on Covered Species, and any other information required by law. For proposed new minor construction activities, this information may be included in the Proposal for New Minor Construction required by Section 10.5.2 of this Agreement. The Parties shall respond in writing to the proposed amendment within sixty (60) days of receipt of such notice.

10.4.1.2.3 Objection by a Wildlife Agency

A Wildlife Agency may object to a proposed Minor Amendment only upon a written statement that the Federal and State Permits or the HCP, after giving effect to such amendment, would not meet the requirements of Section 10(a)(2)(B) of FESA or Section 2081 of CESA; provided, however, that the Wildlife Agencies may not propose or approve as a Minor Amendment any revision to the Federal and State Permits, the HCP, or this Agreement if the Wildlife Agencies determine that such amendment would result in: adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP; or additional Take not analyzed in connection with the original HCP.

Where possible, before rejecting a proposed Minor Amendment, the Wildlife Agency shall first consult with PG&E and suggest reasonable conditions or alterations to the proposal which, if agreed to by PG&E, would permit the Wildlife Agency to approve the proposed Minor Amendment.

10.4.1.2.4 Objection by PG&E

PG&E may object to a proposed Minor Amendment upon any reasonable basis.

10.4.1.2.5 Unresolved Objections

If the Wildlife Agencies reasonably object to a Minor Amendment proposed under this subsection 10.4.1.2, and the objection is not resolved by any conditions or alterations, the proposed amendment shall be processed as a Major Amendment of the Federal and State Permits in accordance with Section 10.4.2 of this Agreement.

10.4.1.2.6 Date that a Minor Amendment Becomes Effective

A Minor Amendment shall become effective, if at all, on the last date on which each of the Parties has provided actual or constructive approval. Minor Amendments of the State Permit shall become effective upon CDFG approval.

10.4.2 Major Amendment

All changes to the Federal and State Permits, this Agreement and the HCP that do not qualify under Section 10.4.1 of this Agreement may be processed as a Major Amendment in accordance with all applicable laws and regulations, including but not limited to FESA, NEPA, CESA and CEQA. The Party proposing the Major Amendment shall provide a statement of the reasons and an analysis of its environmental effects, if any, including its effects, if any, on Covered Species and Covered Activities under the HCP. The Wildlife Agencies shall use their best efforts to process the proposed Major Amendment within one hundred eighty (180) days of submission of the application, except where longer times are required by law. PG&E may, in its sole discretion, reject any Major Amendment proposed by the Wildlife Agencies. PG&E's discretion to reject any Major Amendment proposed by CDFG shall not be interpreted as a limitation on or a waiver of CDFG's authority to amend the State Permit as required by law regardless of whether PG&E concurs with such amendment. (Cal. Code Regs., tit. 14, §783.6, subd. (c)(2).)

10.5 New Minor Construction

During the term of the Federal and State Permits, PG&E may need to engage in minor construction activities that are not specifically included as Covered Activities ("New Minor Construction"). These activities may be compelled to respond to population increases that were not reasonably foreseeable at the time of the preparation of the HCP, or to comply with new federal or state regulatory mandates that are enacted during the term of the Federal and State Permits.

Nothing in this Agreement, the HCP, or the Federal and State Permits limits PG&E's right to engage in New Minor Construction in the Plan Area that is not specifically included as Covered Activities. Nothing in the Federal and State Permits, this Agreement or the HCP requires PG&E to amend the HCP or the Federal and State Permits to include such minor construction, as long as any Take of Covered Species is authorized separately. PG&E acknowledges CDFG would prefer to process and provide take authorization for New Minor Construction through an amendment of the State Permit. CDFG shall respond to and process any proposed amendment of the State Permit for New Minor Construction pursuant to section 783.6, subdivision (c), of Title 14 of the California Code of Regulations. Unless such New Minor Construction is added to the State or Federal Permit or the HCP through either the Minor or Major Amendment processes provided in Section 10.3 of this Agreement, however, these activities will be not be covered by these Federal or State Permits.

10.5.1 Adding New Minor Construction to the HCP

Based upon the analysis in the HCP of the impacts of minor construction activities on Covered Species in the Plan Area, it is likely that most new activities that are substantially similar to the Covered Activities will result in similar impacts, and therefore, adding such activities to the HCP and implementing them pursuant to the Conservation Strategy of the HCP will not likely result in adverse effects to the Covered Species different from those analyzed in connection with the original HCP.

PG&E may seek take authorization from the Wildlife Agencies for New Minor Construction in the Plan Area pursuant to section 10.3 of this Agreement, the HCP, and controlling law. The Wildlife Agencies may provide take authorization to PG&E for such New Minor Construction as a Major or Minor Amendment of the Federal and State Permits. Any such activities that PG&E successfully includes for coverage under the Federal and State Permits through the Minor or Major Amendment process shall thereafter be deemed Covered Activities. All subsequent references to the HCP shall be deemed to include a reference to such New Minor Construction. All provisions of this Agreement, the HCP, and the Federal and State Permits that apply to the Plan Area shall apply to those New Minor Construction activities. No modification or other change to any provision of this Agreement, the HCP, and the Federal and State Permits, including levels of Authorized Take, shall be implied, unless such provision is specifically amended in writing during the amendment process pursuant to Section 10.3 of this Agreement.

10.5.2 Proposal for New Minor Construction

PG&E may propose to add New Minor Construction, by providing to the Wildlife Agencies a Proposal for New Minor Construction that includes:

- (a) A map showing that the New Minor Construction is within the Plan Area;
- (b) A concise description of the New Minor Construction;
- (c) A discussion, based upon the best currently available information, of the land-cover types, the potential habitat, and any known occurrences of Covered Species in the area to be affected by the New Minor Construction;
- (d) A statement describing how the New Minor Construction will be implemented by PG&E in accordance with all applicable measures in the Conservation Strategy detailed in the HCP;
- (e) An analysis of whether the proposed take authorization for New Minor Construction and related Major or Minor Amendments are consistent with the Federal and State Permits;
- (f) An analysis of whether the proposed take authorization for New Minor Construction will result in significant impacts not analyzed or mitigated to less than significant under the HCP, EIS/EIR, or Federal and State Permits; and
- (g) Any other information required by law.

The Wildlife Agencies shall provide any reasonable objection in writing to PG&E within sixty (60) days of receipt of a Proposal for New Minor Construction, specifying the reasons why in their judgment the Proposal is incomplete or inadequate.

A Major Amendment shall be required to finally approve the addition of the New Minor Construction to the HCP and Federal and State Permits only if there is substantial evidence to demonstrate that the proposed addition will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The analysis described above in subsection (e) and (f) is intended to provide the opportunity to offer substantial evidence to support a conclusion that supplemental environmental review under NEPA or CEQA is not required to approve the Proposal for New Minor Construction, and that a Minor Amendment is appropriate.

If PG&E elects not to provide the analysis described in subsection (e) and (f), the Wildlife Agencies may, in their discretion, treat the Proposal for New Minor Construction as a Major Amendment under Section 10.4.2 of this Agreement.

11.0 MUTUAL ASSURANCES

11.1 Purpose

A primary purpose of the HCP and this Agreement is to formalize and authorize a plan under which PG&E may implement required O&M Activities within the Plan Area in a way that minimizes and mitigates impacts to the Covered Species and their habitat. Based on and in consideration of this Agreement, the HCP, and the Federal and State Permits, the Wildlife Agencies hereby provide assurances pursuant to their respective regulatory authorities to PG&E with regard to the following provisions contained in this Section 11.0.

11.2 No Surprises/Unforeseen Circumstances

11.2.1 Federal “No Surprises” Assurances

Consistent with the No Surprises Rule at 50 C.F.R. Sections 17.3, 17.22(b)(5) and 17.32(b)(5), as the regulations are written as of the Effective Date, and provided that PG&E is properly implementing the HCP, USFWS shall not require PG&E to provide additional land, water or other natural resources, or financial compensation, or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the HCP, this Agreement and the Federal Permit with respect to Covered Activities without the consent of PG&E. Adaptive Management and Changed Circumstances are provided for under the HCP and therefore are not subject to the restrictions on additional mitigation contained in the No Surprises Rule.

In the event there are changes to the Federal No Surprises Rule after the Effective Date that materially effect the Federal assurances provided by this Agreement, PG&E may elect to relinquish the Federal Permit and terminate this Agreement pursuant to Section 12.6 of this Agreement.

11.2.2 State Assurances

11.2.2.1 CESA Compliance

CDFG shall consider adherence to the terms of the State Permit and this Agreement to be compliance with the CESA and California Native Plant Protection Act for the impacts of Covered Activities on Covered Species. Take of Fully Protected Species is not authorized by this Agreement or the State Permit.

11.2.2.2 Adequate Mitigation Under CESA

CDFG shall consider adherence to the terms of the State Permit, the HCP, and this Agreement to minimize and fully mitigate the impacts associated with the incidental take of Covered Species as authorized by the State Permit and this Agreement pursuant to CESA.

11.2.2.3 Assurances

Except as otherwise required by law, no further mitigation from PG&E consisting of land, additional land restrictions, or financial compensation beyond that described herein and provided for in the HCP and State permit, will be required by CDFG to address the impacts of Covered Activities on Covered Species or their habitats pursuant to CESA.

11.2.3 Unforeseen Circumstances Finding

In the event that the USFWS or PG&E believes that unforeseen circumstances may exist in accordance with the Federal definitions, it shall immediately notify the other Parties. If the USFWS believes unforeseen circumstances exist, it shall clearly document the basis for a proposed finding regarding the existence of unforeseen circumstances. USFWS shall follow the requirements of 50 C.F.R. Sections 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C).

Within fifteen (15) days of receiving such notice, the Parties shall meet or confer to consider the proposed finding and any potential changes to the Conservation Strategy, subject to the Federal and State Assurances provided in Sections 11.2.1 and 11.2.2 of this Agreement. The USFWS shall make an unforeseen circumstances finding based on the best scientific evidence available, after considering any responses submitted by PG&E, and the USFWS shall have the burden of demonstrating that unforeseen circumstances exist.

11.2.4 Effect of Unforeseen Circumstances Finding

In the event USFWS makes a finding of unforeseen circumstances and additional conservation and mitigation measures are deemed necessary to respond to such unforeseen circumstances, the USFWS may require additional conservation measures from PG&E, but only if such measures are limited to modifications that maintain the original terms of the HCP to the maximum extent possible. Additional conservation measures shall not involve the commitment of additional land, water, natural resources or financial compensation, or additional restrictions on the use of land, water or other natural resources, without the consent of PG&E.

11.2.5 Interim Obligations Upon a Finding of Unforeseen Circumstances

If any Party makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, PG&E will avoid appreciably reducing the likelihood of the survival and recovery of the affected species in the Plan Area, subject to any conflicting regulatory mandate.

11.2.6 Wildlife Agencies' Response to a Finding of Unforeseen Circumstances

The USFWS shall utilize its authorities and resources to protect Covered Species in the event of unforeseen circumstances. The USFWS may utilize land acquisition and exchange, habitat restoration and enhancement, translocation, and other management techniques beyond those provide in the HCP. The Wildlife Agencies may work with other Federal, State, and local agencies, tribes, environmental groups, and private entities to provide for the continued conservation of the Covered Species in the wild in the event of a finding of unforeseen circumstances.

11.3 Changed Circumstances

11.3.1 Federal Definition

As provided in 50 C.F.R. § 17.3, the term “changed circumstances” means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Wildlife Agencies and PG&E, and that can be planned for in the HCP.

11.3.2 Existence of Changed Circumstances

Changed circumstances and planned responses to those circumstances, as further described in Chapter 6 of the HCP, include: vandalism or other intentional, destructive

illegal human activities; natural catastrophic events, invasion of specified exotic species or diseases; impacts to compensation lands as a result of PG&E's need to carry out emergency activities; and listing of species in the Plan Area that is not a Covered Species. In the event that any Wildlife Agency or PG&E believes that any of these changed circumstances as further defined in Chapter 6 of the HCP may exist, it shall immediately notify the other Parties. The Parties agree to follow the remedial measures for responding to changed circumstances provided in Chapter 6 of the HCP. The Wildlife Agencies will not require PG&E to carry out any measure not identified in Chapter 6 of the HCP.

The existence of any condition or the occurrence of any event that might fit the Federal definition of changed circumstances that is not specifically identified as a changed circumstance in Chapter 6 of the HCP will be deemed an unforeseen circumstance and subject to Section 11.2 of this Agreement.

11.4 New Listings

The Parties agree that it is the intent of this Agreement that lands acquired for mitigation purposes will be administered so as to enhance their value for all Covered Species.

Provided PG&E is properly implementing the HCP, the Federal Permit shall automatically become effective as to each Covered Species that is not a Federal Listed Species concurrent with the listing of such species under FESA.

Subject to compliance with all other terms of this Agreement and the HCP, the State Permit shall become effective as to each Covered Species that is not a State Listed Species as of the date the species is accepted and designated as a candidate species pursuant to California Fish and Game Code section 2074.2, upon confirmation by CDFG that substantial evidence then available demonstrates that the State Permit meets the standards in California Fish and Game Code Section 2081(b) and Title 14 of the California Code of Regulations, Section 783.4 with regard to the newly designated candidate species. In the event CDFG determines that such standards will not be met, and the State Permit does not become effective upon the designation of the species as a candidate, threatened, or endangered species under CESA, CDFG shall accept and give due consideration to the minimization and mitigation measures in the HCP and this Agreement in support of an application for a permit amendment or for a separate CESA incidental take permit authorizing incidental take of such newly designated candidate, threatened or endangered species. CDFG shall make reasonable efforts to review and process the application for an amendment to the State Permit or a new CESA incidental take permit to ensure, to the extent consistent with CESA, that an incidental take permit covering the Covered Activities is issued at the time the species is accepted and designated as a candidate species under CESA. .

11.4.1 To the extent permitted by CESA, CDFG shall consider the HCP and this Agreement in any future determination or recommendation to the Fish and Game

Commission by DFG with regard to the listing of one or more of the currently unlisted Covered Species as an endangered species or threatened species pursuant to CESA.

11.5 Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act

The Federal Permit issued by the USFWS shall constitute a Special Purpose Permit under 50 CFR § 21.27 for the Take of all Covered Species identified at 50 CFR § 10.13, excluding bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*), which are listed under the FESA as of the Effective Date (and for the Take of unlisted Covered Species identified at 50 CFR § 10.13, when the Federal Permit becomes effective as to such species as provided in Section 11.4 of this Agreement) in the amount and/or number and subject to the terms and conditions specified in the Federal Permit. The Special Purpose Permit shall be valid for a period of three years from its effective date, provided the Federal Permit remains in effect for such period. The Special Purpose Permit shall be automatically renewed provided that PG&E remains in compliance with the terms of the Federal Permit and this Agreement. Each such renewal shall be valid for the maximum period allowable under the applicable regulations at the time of the renewal (which, as of the Effective Date, is three years), provided that the Federal Permit remains in effect for such period.

11.6 Federal Consultations

Nothing in this Agreement will limit the right or obligation of any Federal agency to engage in consultation with USFWS and/or NOAA Fisheries as required under Section 7 of FESA (16 U.S.C. Section 1536(a)). However, in any consultation with USFWS with regard to Covered Species that may be required pursuant to Section 7, subsequent to the Effective Date in connection with Covered Activities, USFWS shall, to the maximum extent permitted by law and regulation, rely upon, and utilize the Section 7 biological opinions issued during the approval of this HCP, and ensure that any conservation and mitigation for the incidental take of Covered Species in such subsequent Section 7 biological opinion conforms to the conservation and mitigation provided under the HCP and does not impose any new, additional or different conservation or mitigation measures on PG&E beyond the requirements provided for under the HCP and this Agreement. The USFWS agrees that subsequent Section 7 biological opinions shall not conflict with or interfere with the implementation of the Conservation Strategy.

11.7 Critical Habitat

USFWS agrees that it will consider the HCP in the preparation of any proposed determination of new critical habitat or revision of existing critical habitat for any Covered Species. USFWS agrees that if critical habitat is designated for any Covered species and PG&E is properly implementing the terms of the HCP, USFWS will not require PG&E to commit new, additional or different conservation or mitigation beyond that provided for under the HCP and this Agreement.

12.0 ISSUANCE AND ENFORCEMENT OF INCIDENTAL TAKE AUTHORIZATIONS

12.1 Take Authorization

As of the Effective Date, PG&E may Take the Covered Species while carrying out Covered Activities in the Plan Area, as authorized by and subject to the conditions of the Federal Permit, the State Permit, the HCP and this Agreement.

The authority issued to PG&E hereunder applies to all of PG&E's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors who engage in any Covered Activity. PG&E shall conduct an educational program to inform all such persons and entities of the terms and conditions of the Federal Permit, the State Permit, the HCP and this Agreement. PG&E shall be responsible for ensuring the compliance of those terms and conditions by all such persons and entities. All contracts between PG&E and such persons and entities shall require compliance with the Federal Permit, the State Permit, the HCP and this Agreement.

12.2 Original Term

The Take authorizations will take effect on the Effective Date and be effective for thirty (30) years, unless it is terminated, suspended or revoked sooner.

12.3 Remedies In General

Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the HCP, the Federal Permit and the State Permit, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

- (a) None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement.
- (b) The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

12.4 Suspension And/Or Revocation

USFWS may suspend or revoke the Federal Permit, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. As of the Effective Date, these regulations are codified at 50 C.F.R. §§ 13.27 through 13.29, 17.22, and 17.32.

Suspension, in whole or in part, or revocation of the State Permit by CDFG under CESA shall be governed by section 783.7 of Title 14 of the California Code of Regulations, and other laws and regulations in force at the time of such suspension or revocation.

Partial suspension or revocation of the Federal or State Permits may include removing only certain species from the list of Covered Species, or only certain activities from the list of Covered Activities, or only certain areas from the Plan Area.

However, except where a Wildlife Agency determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend or revoke the Federal or State Permit(s) without first (1) requesting PG&E to take appropriate remedial actions and providing adequate time for implementation of such actions, and (2) providing PG&E with written notice of the facts or conduct which may warrant the suspension or revocation and an adequate and reasonable opportunity for PG&E to demonstrate why suspension or revocation is not warranted.

Any specific decision or order suspending the Federal and/or State Permit(s) shall specify either a date or the fulfillment of a condition or conditions on which the suspension will terminate. The Parties agree that in the event of any total or partial suspension of the Federal or State Permit(s), all Parties shall act expeditiously and cooperatively to reinstate the Federal or State Permit(s). In the event a suspension has not terminated within six (6) months of its effective date, at PG&E's request, the USFWS shall within thirty (30) days either terminate the suspension or commence a proceeding to revoke the Federal Permit. PG&E may appeal or otherwise seek reconsideration of a CDFG determination to suspend or revoke the State Permit pursuant to sections 783.7 and 783.8 of Title 14 of the California Code of Regulations, and other relevant laws and regulations in force at the time of such suspension or revocation. Such suspension or revocation may apply to the entire Federal and/or State Permit(s), or may apply only to specified Covered Species or Covered Activities.

12.5 PG&E's Obligation During Suspension and Revocation

During the period of suspension, PG&E shall remain obligated to implement the Conservation Strategy and adhere to this Agreement. The State permit shall remain valid and effective until a final determination regarding permit suspension is made by CDFG.

Notwithstanding revocation, PG&E shall remain obligated to compensate, as determined pursuant to Section 12.8 of this Agreement, for the impacts of all Take that occurred under the Federal and/or State Permit(s) prior to revocation in accordance with the State and Federal Permits, this Agreement and the HCP. Upon compensating for such Take, PG&E shall have no further obligations under the Federal and/or State Permits.

12.6 Relinquishment

PG&E may relinquish the Federal and State Permits. Such relinquishment shall be in accordance with the regulations of the applicable Wildlife Agency in force, if any, on the date of such relinquishment. If no such regulations exist, PG&E shall provide ninety (90) days written notice to the Wildlife Agencies of its intent to relinquish the Federal or State Permits. Notwithstanding its relinquishment of the Federal or State Permits, PG&E shall remain obligated to compensate, as determined pursuant to Section 12.8 of this Agreement, for the impacts of all Take that occurred under the Federal and/or State Permit(s) prior to relinquishment in accordance with the Federal and State Permits, this Agreement and the HCP. Upon compensating for such Take, PG&E shall have no further obligations under the Federal or State Permits.

12.7 Dispute and Issue Resolution

The Parties recognize that disputes concerning implementation or interpretation of this Agreement, the HCP, and the Permits may arise from time to time. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this section or such other procedures upon which the Parties may later agree. Any Party may seek any available remedy without regard to this Section 12.7 if the Party concludes that circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

12.7.1 Meet and confer

If the USFWS or CDFG objects to any action or inaction by the PG&E on the basis that the action or inaction is inconsistent with the HCP, the Permits, or this Agreement, it shall so notify PG&E in writing, explaining the basis of such objection. PG&E shall respond to the notice within thirty (30) days of receiving it, stating what actions the PG&E proposes to take to resolve the objection or, alternatively, explaining why PG&E believes the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting agency, the agency shall so notify PG&E, and PG&E shall implement the actions, if any, proposed in the response to the agency. If the response does not resolve the objection to the agency's satisfaction, the agency shall notify PG&E accordingly, and the agency and PG&E shall meet and confer to attempt to resolve the dispute. The meeting shall occur within 30 (days) after PG&E receives the objecting agency's response, or at such later time as PG&E and the agency may agree. PG&E shall

take notes at the meeting, summarize the outcome, and distribute meeting notes to each Party in attendance for its review.

PG&E shall use the same procedure to resolve objections to any action or inaction of the USFWS or CDFG, and the USFWS and CDFG shall respond in the same manner to notices delivered by PG&E.

12.7.2 Elevation of Dispute

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 12.7.1, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, “chief executive” shall mean the CDFG Regional Manager, the USFWS Field Supervisor, and PG&E’s Director of Environmental Policy. Each Party shall be represented in person by its chief executive at the meeting, and the meeting shall occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

12.8 Obligation to Compensate for Actual Impacts

Upon any early termination of the Federal and/or State Permits, whether through revocation or relinquishment, PG&E shall have no further obligations under this Agreement, the HCP or the Federal and/or State Permits, unless the applicable Wildlife Agency determines in writing that the impacts of Take of Covered Species that occurred under the Federal and State Permits have not been compensated for. If any Wildlife Agency determines that additional compensation is required, that agency shall bear the burden of proving the extent of impacts of Take that occurred had not been compensated for at the time of termination to the extent required by FESA or CESA. PG&E and the Wildlife Agencies shall work together to assess and determine whether and to what extent impacts of Take of Covered Species that occurred under the Federal and State Permits have not been compensated for. The Wildlife Agencies may request additional information pertinent to the assessment and determination in accordance with Section 8.3; provided, however, that any such request for additional information shall be made within 30 (thirty) days of the early termination.

To determine “compensation,” the Wildlife Agency shall compare the amount and impact of authorized Take of the Covered Species that occurred prior to termination with the amount and effect of compensation provided up to that time. This analysis will take into consideration, among other things, the duration the permit has been in effect, and the location, quantity and quality of compensation lands that have been acquired and/or enhanced.

Any determination by the Wildlife Agency that compensation has not been achieved at the time of revocation or relinquishment shall have a reasonable, factual basis and be issued in writing within 60 (sixty) days after termination or, if a Wildlife Agency has requested additional information as described above, within 30 (thirty) days of receiving

the requested information. The determination shall specify which measures of the Conservation Strategy that PG&E will be obligated to continue to apply, and for how long. If the Wildlife Agency determines that PG&E must provide additional compensation, the Wildlife Agency and PG&E shall identify the amount of compensation required, and it shall set a practicable schedule with which the PG&E must comply to achieve compensation, including what habitat types the compensation shall conserve. If the Wildlife Agency fails to inform PG&E that additional compensation is required in writing within sixty (60) days after termination, PG&E shall be deemed to have provided compensation for any impacts of Take under the Federal and/or State Permits and shall be relieved of any further obligation to provide compensation under the Federal and/or State Permits, the HCP, and this Agreement.

In no case shall PG&E be obligated to provide compensation for authorized Take in excess of the actions that would have been required of PG&E had the Federal and/or State Permit(s) not been terminated.

13.0 MISCELLANEOUS

13.1 Force Majeure

In the event that PG&E is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of PG&E (“force majeure”), including but not limited to acts of God, third party actions, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, PG&E shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach of this Agreement, provided that nothing in this Section shall be deemed to authorize any Party to violate FESA or CESA, and provided further that:

- (a) The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;
- (b) Within two weeks after the occurrence of the force majeure PG&E gives the Wildlife Agencies written notice describing the particulars of the occurrence;
- (c) PG&E uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any legal action on terms which in the sole judgment of PG&E are contrary to its interest); and
- (d) When PG&E is able to resume performance of its obligations, PG&E shall give the Wildlife Agencies written notice to that effect.

13.2 Notices

All notices, demands, or communications from one Party to another may be personally delivered, sent by U.S. Mail, or sent by a recognized overnight delivery service to the

names and addresses provided in this section. The notice shall be effective at the time of receipt of the personal or overnight delivery, or five days after deposit in the U.S. Mail.

PG&E: [Names & Addresses]

USFWS: [Names & Addresses]

CDFG: [Names & Addresses]

Any Party may change the address to which such notices, demands, or other communications may be sent by giving the other Parties written notice of such change.

When signed documents are necessary, the Parties agree to accept signed documents transmitted by facsimile, portable document format (e.g., "document.pdf"), or other similar reprographic technology, and to rely upon such documents as if they bore original signatures. The Parties agree to provide, within seventy-two (72) hours after transmission of such documents, the original signed documents to each of the other Parties.

13.3 Severability

If any provision of this Agreement or the HCP is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible and all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provision, subject to relinquishment per Section 12.6.

13.4 Entire Agreement

This Agreement supersedes any and all prior agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other party that is not embodied herein.

13.5 Attorneys' Fees

If any action at law or equity, including any action for declaratory relief, is brought by a Party to this Agreement to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs. If any action at law or equity, including any action for declaratory relief, is brought by a third party to enforce or interpret the provisions of this Agreement, the Parties shall negotiate a joint defense agreement, as appropriate, at the time the litigation is filed. The Parties may also execute a cost sharing agreement to address the costs associated with the defense against the third party action or proceeding.

13.6 Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

13.7 Federal and State Appropriations

The duty of the USFWS to carry out its obligations under this Agreement, the HCP, and the State Permit shall be subject to the federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

The duty of CDFG to carry out its obligations under this Agreement, the HCP, and the State Permit shall be subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

13.8 Elected Officials

No member of Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

13.9 Governing Law

This Agreement shall be governed by and construed in a manner consistent with the statutory and regulatory authority of the USFWS under the FESA, its implementing regulations and other applicable federal laws, and of the CDFG under the CESA, its implementing regulations, and other applicable state laws. Nothing in this Agreement is intended to nor shall be construed to limit or compromise the authority of the USFWS to fulfill its responsibilities under the FESA, nor CDFG under CESA.

13.10 No Third-Party Beneficiaries

This Agreement is solely for the benefit of the State of California by and through CDFG, the people of the United States of America by and through USFWS, and PG&E.

Notwithstanding existing federal and state law, this Agreement shall not create any right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a Party to this Agreement to maintain a lawsuit or claim for personal or other injuries or damages pursuant to the provisions of this Agreement.

13.11 Counterparts

This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

13.12 References to Regulations

Unless otherwise specified, any reference in this Agreement, the HCP or the Federal and State Permits to any regulation or rule of USFWS or CDFG shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

13.13 Due Authorization

Each Party warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

EXHIBITS

A. List of Covered Species